



KATTEN MUCHIN ROSENMAN LLP
575 MADISON AVENUE
NEW YORK NY 10022-2585

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OFFICE OF PETITIONS

In re Application of :
Sakai et al. :
Application No. 10/773782 : **DECISION ON PETITION**
Filed: 02/05/2004 :
Attorney Docket No. FUJM 20.945 :

This is a decision on the petition, filed 11 January, 2006, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to the Office action requiring restriction and/or election mailed on 11 July, 2005, which set a one (1) month shortened statutory period for reply. Accordingly, a reply was due on or before 12 August, 2005.

Petitioners state that a timely reply was filed via certificate of facsimile transmission on 3 August, 2005, which included the following papers: RESPONSE TO RESTRICTION REQUIREMENT. Petitioners have submitted a copy of the previously faxed correspondence, which bears a certificate of facsimile transmission dated 3 August, 2005, which would have rendered the reply timely if received.

The file record does not include the originally submitted papers. Failure to receive correspondence which includes a certificate of mailing or certificate of facsimile transmission is addressed in 37 CFR 1.8(b), reproduced below:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is

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dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file a reply to the Office action of 11 July, 2005, is hereby withdrawn and the application restored to pending status.

The copy of the reply received with the petition will be accepted in place of the reply shown to have been mailed (or transmitted by facsimile) on 3 August, 2005.

This application is being referred to Technology Center AU 2839 for appropriate action in the normal course of business on the reply received with petition.


Douglas I. Wood
Petitions Attorney
Office of Petitions